

**AMENDMENTS TO THE DRAWINGS**

This Amendment encloses new drawing figures 10 and 11. Applicants respectfully request approval and entry of the new Drawing Sheets. The drawings do not add new matter.

**REMARKS**

Claims 15-33 are pending. This Amendment amends claim 20 merely to rewrite this claim in independent form and adds new claims 29-33. Claims 15, 20, and 32-33 are independent.

This Amendment encloses an excess claim fee payment letter for one (1) excess independent claim.

**Statement of the Substance of the Interview**

Applicants' representative thanks Examiner Joseph James Corrigan and Supervisory Patent Examiner Frantz Jules for the courtesies extended in the personal interview conducted with Applicants' Representative, John J. Dresch, Reg. No. 46,672, on June 3, 2008. A copy of an Interview Summary was provided by the Examiner at the interview.

Applicants submit this Statement to comply with the requirements of M.P.E.P. § 713.04.

In the interview, the following was discussed:

**A. Identification of claims discussed:**

Claims 15-28.

**B. Identification of prior art discussed:**

The Janke et al. reference (U.S. Pat. No. 4,920,758), the Oike reference (U.S. Pat. No. 4,852,361), and the Noritake et al. reference (U.S. Pat. No. 5,876,014).

**C. Identification of principal proposed amendments:**

None.

**D. Brief Identification of principal arguments:**

Applicants argued that the features of Claims 20-24 are not disclosed or suggested by the prior art of record.

The Examiner kindly acknowledged that the features of the locking element 23, central support 19, shaft 20, leg 21, and slot 22 appear to be distinguishable over the prior

art of record. The Examiner suggested amending the claims or adding new claims to further define or clarify the features of the attachment of the control body 13 to the rotatable shaft 10 using the L-shaped wire locking element 23.

The Examiner also suggested that Applicants add new drawings to illustrate the features of the wire locking element 23, the central support 19, slot 22, leg 21, and shaft 20, as illustrated, for example, in FIG. 4 and described in the specification at page 7, lines 6-31.

**E. Results of the Interview:**

No agreement was reached.

**New Claims**

In accordance with the Examiner's very helpful suggestion, this Amendment adds new claims 29-32 to clarify the features of the attachment of the control body 13 to the rotatable shaft 10 using the L-shaped wire locking element 23. (Page 7, lines 6-31.) The new claims do not add new matter.

As the Examiner kindly acknowledged in the personal interview, the features of the locking element 23, central support 19, shaft 20, leg 21, and slot 22 are not disclosed or suggested by the prior art of record.

New independent claim 33 defines more clearly that the evaporation chamber includes an evaporator. (Page 1, lines 7-8.) New claim 33 does not add new matter. Applicants respectfully submit that the prior art of record clearly fails to disclose or suggest at least an evaporation chamber including an evaporator as claimed. In stark contrast to the claimed invention, the Response to Arguments of the Office Action relies on the Janke et al. reference as disclosing a space that does not include an evaporator. The Office Action specifically acknowledges that the space is adjacent to a space in which an evaporator is disposed.

Applicants respectfully submit that the prior art of record clearly fails to disclose or suggest at least an evaporation chamber including an evaporator as claimed.

Applicants respectfully submit that the features of claims 29-33 are not disclosed or suggested by the prior art of record, either individually or in combination. Applicants respectfully request allowance of claims 29-33.

**New Drawings**

In accordance with the Examiner's very helpful suggestion, this Amendment adds new Figures 10 and 11 to further illustrate the features of the wire locking element 23, the central support 19, slot 22, leg 21, and shaft 20, as described in the specification, for example, at page 7, lines 6-31. The amended drawings do not add new matter.

Applicants respectfully request approval and entry of the new Drawing Sheets.

**The Janke et al. Reference**

The Office Action rejects claims 15-19 and 25-28 under 35 USC §102(b) as allegedly being anticipated by the Janke et al. reference (U.S. Pat. No. 4,920,758). Applicants respectfully traverse this rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. [...] The identical invention must be shown in as complete detail as is contained in the ... claim." M.P.E.P. § 2131.

The Janke et al. reference does not teach the features of the claimed invention including "*an evaporation chamber [and] an air passageway having a plane and enabling air exchange between said storage chamber and said evaporation chamber.*" The disclosure explains that an air passageway enabling air exchange between a storage chamber and an evaporation chamber is provided that minimizes, for example: (1) susceptibility to freezing, (2) space requirements, and (3) manufacturing costs. (Page 2, lines 3-7).

The Office Action alleges that the Janke et al. reference discloses a storage chamber (22, figure 1) and a freezer compartment (20, figure 1), which is compared to an

evaporation chamber allegedly because air sent through the evaporator passes through fan aperture (28) and is stored in this compartment. (Office Action at pages 4-5).

“During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." [...] The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art."” (M.P.E.P. § 2111.)

Applicants respectfully submit that the Response to Arguments of the present Office Action unreasonably interprets the term “evaporation chamber” to include any space where evaporation occurs or can occur. (Pages 8-9, bridging paragraph.) This interpretation clearly is not consistent with the specification of the present application. For example, the disclosure of the present application clearly explains that the evaporation chamber includes an evaporator. The separation of the storage chamber and the evaporation chamber, which includes the evaporator, enables the evaporator to defrost when required, without heating the storage chamber. (Page 1, lines 1-13.) Hence, the “evaporation chamber” is not reasonably interpreted in view of the specification to include any space where evaporation occurs or can occur.

Turning to the applied prior art, the Janke et al. reference merely discloses a freezer compartment 20 and a fresh food, or above freezing, compartment 22, not an evaporation chamber. (Col. 3, lines 44-49). That is, neither the freezer compartment 20 nor the fresh food compartment 22 is an evaporation chamber. Thus, the Janke et al. reference does not disclose at least “*an evaporation chamber [and] an air passageway having a plane and enabling air exchange between said storage chamber and said evaporation chamber*” as recited in Claim 15.

For these and other reasons, the Janke et al. reference does not anticipate the subject matter defined by independent Claim 15. Claims 16-19 and 25-28 depend from Claim 15 and are allowable for the same reasons and also because they recite additional patentable subject matter. Applicants respectfully request withdrawal of this rejection.

**The Janke et al. Reference in view of the Oike reference**

The Office Action rejects claims 15-19 and 25-28 under 35 USC §103(a) as allegedly being unpatentable over the Janke et al. reference in view of the Oike reference (U.S. Pat. No. 4,852,361). Applicants respectfully traverse this rejection.

“Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art [...] after consideration of all the facts. [...] “Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art references as a whole. [...] In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” (M.P.E.P. § 2141.02(I)).

Neither the Janke et al. reference nor the Oike reference, either individually or in combination, teaches or suggests (1) “*an air passageway having a plane and enabling air exchange between said storage chamber and said evaporation chamber*” and (2) “*a control body arranged on said air passage opening*” as recited in Claim 15. Applicants also respectfully submit that one of ordinary skill in the art would not have been motivated to combine the teachings of the Janke et al. reference with the teachings of the Oike reference.

As explained above, the Janke et al. reference discloses a baffle 48 connecting a freezer compartment 20 and a fresh food, or above freezing, compartment 22, not an evaporation chamber. (Col. 3, lines 44-49). Similarly, the Oike reference merely discloses a freezer compartment return duct 21 connecting the freezer compartment 7 and the lower refrigerating compartment 9.

Thus, neither the Janke et al. reference nor the Oike reference, either individually or in combination, teaches or suggests (1) “*an air passageway having a plane and enabling air exchange between said storage chamber and said evaporation chamber*” and (2) “*a control body arranged on said air passage opening*” as recited in Claim 15.

For these and other reasons, the Janke et al. reference and the Oike reference, either individually or in combination, do not disclose or suggest the subject matter defined by independent Claim 15. Claims 16-19 and 25-28 depend from Claim 15 and are allowable for the same reasons and also because they recite additional patentable subject matter. Applicants respectfully request withdrawal of this rejection.

**The Janke et al. Reference in view of the Noritake et al. reference**

The Office Action rejects claims 20-24 under 35 USC §103(a) as allegedly being unpatentable over the Janke et al. reference in view of the Noritake et al. reference (U.S. Pat. No. 5,876,014). Applicants respectfully traverse this rejection.

“Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art [...] after consideration of all the facts. [...] “Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art references as a whole. [...] In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” (M.P.E.P. § 2141.02(I)).

The Office Action acknowledges that the Janke et al. reference fails to disclose a shaft extending through a sleeve formed in the control body. The Office Action alleges that the Noritake et al. reference makes up for the deficiencies of the Janke et al. reference.

Applicants respectfully submit that it would not have been obvious to combine the Janke et al. reference and the Noritake et al. reference in the manner alleged in the Office Action. The Janke et al. reference discloses a rotatable baffle disk 88. (Col. 6, lines 25-27.) In stark contrast, the Noritake et al. reference discloses a baffle 4 that swings around the shaft units 4a and 4b for opening and closing the cold air gate 3. (Col. 3, lines 54-59.)

Applicants respectfully submit that one of ordinary skill in the art would not have looked to the shaft of a swinging baffle for a rotatable baffle. Moreover, the Office

Action does not explain how the shaft of the swinging baffle of the Noritake reference would be combined with the rotatable baffle of the Janke et al. reference. Further, Applicants respectfully submit that the stated motivation for combining the shaft of the swinging baffle of the Noritake reference with the rotatable baffle of the Janke et al. reference merely amounts to a conclusory statement. (Page 6, lines 10-13).

Even assuming in *arguendo* that it would have been obvious to combine the Janke et al. reference and the Noritake et al. reference in the manner alleged, the Noritake et al. reference fails to make up for the deficiencies of the Janke et al. reference.

Claim 20 recites, in part, “*said shaft extending through a sleeve formed in said control body.*” In stark contrast to the claimed invention, the Noritake et al. reference merely discloses a baffle 4 having shaft units 4a and 4b formed at the ends of the baffle 4. The shaft units 4a and 4b are not sleeves formed in the baffle 4.

For these and other reasons, the Janke et al. reference and the Noritake et al. reference, either individually or in combination, do not disclose or suggest the subject matter defined by independent claim 20. Claims 21-24 depend from Claim 20 and are allowable for the same reasons and also because they recite additional patentable subject matter. Applicants respectfully request withdrawal of this rejection.



**CONCLUSION**

In view of the above, entry of the present Amendment and allowance of Claims 15-33 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Howard', is written over the printed name.

James E. Howard

Registration No. 39,715

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BSH Home Appliances Corporation  
100 Bosch Boulevard  
New Bern, NC 28562  
Phone: 252-639-7644  
Fax: 714-845-2807  
james.howard@bshg.com